

G.R. CASE NO. 20/2015

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS, DIBRUGARH, ASSAM**

G.R. CASE NO. 20/2015

(U/S- 341/325/294 IPC)

Present: **Smti. Sanskrita Khanikar, A.J.S.**
Judicial Magistrate First Class, Dibrugarh

State

- VS -

Sri Jatin Dutta

S/O - Late Premo Dutta

R/O - Hatkhola Gaon

P.S. - Lahowal

Dist - Dibrugarh, Assam

.....**Accused person**

Advocate for the Prosecution : Learned Smti. Lakshmi
Mohan

Advocate for the Defence : Learned Smti. J. Kaur

Particulars of the offences

explained on : 04-12-2015

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Evidence recorded on : 01-04-2016, 26-07-2016,
07-10-2017, 07-12-2017
& 20-06-2018,
Argument heard on : 15-02-2022
Judgment delivered on : 15-02-2022

J U D G M E N T

1. The prosecution case as stated in the F.I.R. dated 02-01-2015 is that on 01-01-2015 at about 05:30 P.M. in the evening the informant's son, namely, Sri Deba Kumar Dutta was physically assaulted by the accused, namely, Sri Jatin Dutta as he was coming out of the house of his friend Sri Debajit Dutta's residence. The accused hit Sri Deba Kumar Dutta on his head with a stick due to which he sustained serious injuries. As such, the informant, namely, Sri Bidya Dutta lodged the instant ejahar against the accused person.

2. A case was registered at Lahowal P.S. subsequent to the lodging of this F.I.R. Upon completion of investigation, the police submitted charge-sheet against the accused person, namely, Sri Jatin Dutta for the commission of offences under sections 341/323/294 of the Indian Penal Code (hereinafter referred to as I.P.C.).

3. The accused Sri Jatin Dutta stood for trial. Copies of the relevant documents were furnished to the accused as required by Section 207 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). Upon finding prima facie case for commission of offences u/sec 341/323/294 of the IPC, the particular therein under were explained to

the accused person to which he pleaded not guilty and claimed to be tried.

4. In support of the case, the prosecution side has examined as many as 6 (six) witnesses namely Sri Bidyadhar Dutta, informant of the case as PW-1, Sri Deba Kumar Dutta as PW-2, Sri Tapan Dutta as PW-3, Smti. Labonya Dutta as PW-4, Sri Gohin Dutta as PW-5 and Dr. Bijan Gogoi as PW-6.

The prosecution also took aid of 02 (two) documents which was exhibited as follows:

The ejahar was exhibited as Exhibit 1 and the medical report of the victim Sri Deba Kumar Dutta as Exhibit 2.

After recording the prosecution evidence, the statement of the accused person was recorded u/sec 313 of Cr.P.C. The defence plea is that of total denial and the accused person claimed innocence. The defence adduced no evidence.

5. I have heard the arguments from both sides and meticulously perused the entire evidence on record.

6. **THE POINTS FOR DETERMINATION**

(i) Whether the accused on 01-01-2015, at Hathkhola Gaon, Dibrugarh, wrongfully restrained the informant's son Sri Deba Kumar Dutta and thereby committed an offence punishable u/sec 341 of the IPC?

(ii) Whether the accused, on the same day and at the same place, voluntarily caused hurt to Sri Deba Kumar Dutta and thereby committed an offence punishable u/sec 323 of the IPC?

(iii) Whether the accused, on the same day and at the same place, used obscene and vulgar language on Sri

Deba Kumar Dutta in a public place and thereby committed an offence punishable u/sec 294 of the IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

7. PW-1, being the informant deposed in his evidence that the accused is known to him. On 01-01-2015, at about 06:30 P.M. he was watching television at his residence when one Sri Dilip Dutta's son Sri Debajit Dutta informed him over the phone that his son, namely, Sri Deba Kumar Dutta (PW-2) had been physically assaulted and that he may be required to be taken to AMCH, Dibrugarh. The place of occurrence was about ½ km from his residence. When he reached the place of occurrence, he found a huge crowd at Sri Dilip Dutta's front yard. He saw some people putting water on his son's (PW-2) wounds. His son was bleeding from the left side of his head. Sometime later, the police arrived at the place of occurrence and immediately sent his son Lahowal PHC for medical examination and treatment. He was sent back home on the same day. He proved Exhibit 1 as the F.I.R. lodged by him by identifying Exhibit 1(1) as his signature therein. Later on, he was informed by his son/PW-2 that as he was coming out his friend Sri Debajit Dutta's house and was about to start his motorcycle, the accused Sri Jatin Dutta hit him on the head. His statement was recorded by the Police.

During his cross-examination, he stated that as the accused was creating a raucous in a state of intoxication, his son/PW-2 suspected that it was the accused who physically assaulted him. He was not present at the place of occurrence during the incident. He reached the place of occurrence about 10 to 15 minutes after the incident. About 20 to 25 people had gathered at the place of

occurrence including Sri Dilip Dutta, Sri Gohin Dutta, Sri Tapan Dutta and Smti. Manjula Dutta. He denied the defence suggestions that he had falsely lodged the instant case against the accused and that the accused did not physically assault his son.

8. PW-2 in his evidence deposed that the informant is his father and that he also recognises the accused person. The incident occurred on the evening of 01-01-2015. At that time, he had gone to his friend Sri Debajit Dutta's house after returning from a picnic. After consuming a paan-tamul at his friend's place he was about to reach the main gate when someone hit him on the head with a jeura stick due to which he fell down. When the accused was about to hit him again, he was caught by Sri Debajit Dutta but somehow, the accused escaped. Soon, people started gathering at the place of occurrence including Sri Gohin Dutta. The people gathered there informed about the matter to his father/informant/PW-1 who soon arrived at the place of occurrence. The accused was shouting that he would cut and kill the PW-2. He sustained injuries on the left side of his head. He was sent to Lahowal PHC for medical examination and treatment. The next day he went to the AMCH, Dibrugarh to get an x-ray done. His father/informant/PW-1 lodged the ejarah in the instant case. His statement was recorded by the police.

During his cross-examination, he stated that on the date of the occurrence he had gone for a picnic with his friends including Sri Tapan Dutta, Sri Gohin Dutta, Sri K. K. Gogoi, Sri Madhav Gogoi and Sri Anup Dutta. According to him, they did not consume alcohol on the date of occurrence. He denied the defence suggestions that he and his friends were creating a disturbance and misbehaving with the neighbourhood women in a state of intoxication. He

denied the defence suggestions that the accused persons is not involved in the instant case and that he sustained the injuries on his person as he was being chased by the local public for misbehaving with the neighbourhood women. About 30 to 50 people had gathered at the place of occurrence after the incident. He had also lodged a case against the accused in 2013. He denied the defence suggestion that he deposed falsely against the accused in the Court.

9. PW-3 deposed in his evidence that the informant and the accused are both known to him. He stated that he does not know anything about the incident.

His cross-examination has been declined by the defence.

10. PW-4 deposed in her evidence that the informant/PW-1 is her husband and the victim/PW-2 is her son. The accused person is also known to her as he is the son of her elder brother. The incident was of January, 2015. At about 10:30 P.M. when she was sleeping at night, she was informed through a phone-call that her son had been physically assaulted by someone. Upon receiving the information, she immediately went to the place of occurrence where she saw a huge crowd. She saw her son/PW-2 in an injured state. Soon the police arrived at the place of occurrence and her son was sent to the hospital for medical treatment and examination. He had to get two stitches on his head. She heard that the accused Sri Jatin dutta had physically assaulted and injured her son. Her statement was not recorded by the police.

During her cross-examination, she stated that she could not remember the names of those who were present at the place of occurrence. She did not state before the police that the accused had physically assaulted her son.

She denied the defence suggestion that her son/PW-2 had indulged in eve-teasing and was beaten by the local public. She denied the defence suggestion that she has deposed falsely in the Court.

11. PW-5 deposed in his evidence that the informant and the accused are both known to him. The incident was of the year 2015. On the date of the occurrence, as he was coming back home , he was asked by a policeman if he knew about the occurrence of any incident of physical assault on that date but he stated to the police that he had not seen any such incident.

During his cross-examination he stated that the parties do not share a cordial relationship.

12. PW-6 being the M.O. deposed in his evidence that on 01-01-2015, he was posted as Medical Officer at Lahowal PHC. On the same day, during emergency evening duty, he examined the victim/PW-2, namely, Sri Deba Kumar Dutta, aged 38 years, Male. He was brought with an alleged history of injury due to being beaten with stick at around 07:00 P.M. at Hatekhula Gaon, Dibrugarh by unknown persons and escorted by police NK1300 Sri Atul Bharali of Ghoramora O.P. Upon examining the patient, he found lacerated wound with bleeding on the side of his head. The type of weapon used for causing the injury was blunt. The injury was of simple nature and the patient was advised to undergo a CT-scan. He proved Exhibit 2 as the medical report of the victim/PW-2 by identifying Exhibit 2(1) as his signature therein.

During his cross-examination, he stated that he did not mention the age of the injury in his report. In his report, he mentioned the time and date and the identification marks of the injured. He also stated that the nature of

injury sustained by the victim/PW-2 may also be caused due to fall on surface.

13. A careful study of the testimonies of the prosecution witnesses reveals that an incident did occur on 01-01-2015 at Hatkhola Gaon, Dibrugarh. PW-1/informant and the PW-2 being the parents of the PW-2/victim were not present at the place of occurrence during the incident. PW-2/victim stated in his cross-examination that the PW-5 was present during the occurrence but in his testimony the PW-5 did not state anything about the said incident. PW-3 also categorically stated that he did not know anything about the incident. The victim/PW-2 deposed in his evidence that at the time of the occurrence when he reached the gate of Sri Debajit Dutta, 'somebody' hit him on the head with a jeura stick and that the accused was caught by Sri Debajit Dutta. The word 'somebody' used by the victim/PW-2 in his testimony is ambiguous and vague and creates a reasonable doubt in the mind of the Court as to whether that 'somebody' indicates the accused. The said Sri Dejajit Gogoi has not been examined by the police and his name does not appear in the list of prosecution witnesses mentioned in the charge-sheet. As such, there is no supporting evidence to the victim/PW-2's testimony. His father/PW-1/informant heard from him that the accused physically assaulted and injured him on the date of the occurrence. His mother/PW-4 also stated that she heard that her son/PW-2 was beaten and injured by the accused, but she did not mention the source from which she heard the same. The fact that the victim/PW-2 did sustain injuries is supported sufficiently by the medical evidence adduced by the prosecution but the role of the accused in causing the said injuries to the victim/PW-2 could not be confirmed by the prosecution evidence. Also, none of the PWs including

the victim/PW-2 has stated any obscene words/abuses uttered by the accused at the time of the occurrence.

14. The prosecution has failed to examine the I.O. in the instant case. The I.O. in this case would have been one of the most important witnesses who could have deposed about the details of the investigation of the case including the statements of the witnesses recorded by him. Non-examination of the I.O. thus, casts reflection on the truthfulness of the prosecution story.

It is one of the cardinal principles of criminal jurisprudence that the prosecution must prove the guilt of the accused beyond all reasonable doubt. As is clear from the above discussion, the evidence on record is quite inadequate to establish the prosecution case and there is ample scope of reasonable doubt as to the factum of the occurrence alleged. Situated thus, I am not inclined to hold the accused person namely, Sri Jatin Dutta guilty of the offences u/sec 341/323/294 IPC. As such, the points of determination are answered in the negative in favour of the accused person.

ORDER

15. In view of the decision made above, the accused person, namely, Sri Jatin Dutta is acquitted of the offences under sections 341/323/294, IPC and set at liberty forthwith.

His bail bond shall remain in force for six months from today in compliance with section 437-A, Cr.P.C.

The case is disposed of on contest.

G.R. CASE NO. 20/2015

Given under my hand and the seal of this Court on this
15th day of February, 2022 at Dibrugarh.

Sanskrita Khanikar
Judicial Magistrate First Class
Dibrugarh

APPENDIX

A. Prosecution witnesses:-

- i) Sri Bidyadhar Dutta, informant of the case as PW-1
- ii) Sri Deba Kumar Dutta as PW-2
- iii) Sri Tapan Dutta as PW-3
- iv) Smti. Labonya Dutta as PW-4
- v) Sri Gohin Dutta as PW-5
- vi) Dr. Bijan Gogoi as PW-6

B. Defence witnesses:- Nil

C. Prosecution exhibits:-

- i) The Ejahar as Exhibit 1
- ii) The medical report of the victim Sri Deba Kumar Dutta as Exhibit 2

D. Defence exhibits:- Nil

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh